

EXHIBIT K

A ‘rain tax’ spurs a storm of controversy in the Philly region, and a court case with broad implications

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While it’s not quite in a league with the Boston Tea Party or [Pennsylvania’s infamous Whiskey Rebellion](#), a recent bump in stormwater fees has stirred a wave of protest in the bankrupt City of Chester, where more than one in four residents live in poverty.

The typical homeowner now pays \$16.50 a month, compared with \$8.25 when the Stormwater Authority of Chester started billing in 2017. Chester homeowners now pay among the highest rates in the country, based on a [survey by a national stormwater-management expert](#).

The Stormwater Authority of Chester says it is pouring the money into reducing runoff and water pollution, along with other projects, in the flood-prone riverfront city of 33,500. The agency says that since it was created in 2016, “Chester has seen a tremendous reduction in flooding and road closings.”

Horace Strand, the authority’s chief, says the authority has added retention basins and upgraded pipes.

But some Chester residents derisively call the fee “the rain tax,” and evidently a lot of them have balked at paying it. As of last month, the authority had nearly more than 1,700 liens against property owners for non-payment, according to county records.

Adelaide Evans is among those who say she is paying too much for too little and she hasn't seen evidence of the authority's work. "I feel we are being ripped off," she said.

Said Brown Williams, a longtime resident of city's West End, "I ain't seeing nothing."

Strand said the fee is not a tax, but money dedicated for a specific purpose. He said the rates were "fiscally responsible," and they didn't represent an increase. The \$16.50 imposed in the fall was just the restoration of the original charge, which had been calculated on projected five-year costs of shoring up an aging stormwater infrastructure and repayment of a \$32 million loan from the state.

The fee, which is based on an estimate of a property's hard surfaces or "impervious cover" — including parking areas, sidewalks, and roofs — had been lowered to \$8.25 because of the blowback, including from Widener University, one of the city's largest landowners. The university, which was paying more than \$170,000 a year, sued and won a significant reduction.

Strand said that the opposition wells from unfamiliarity with the concept.

It is relatively new to Chester, and would be to most municipalities in the nation, although the stormwater-utility fee movement has been a rising tide across the country in recent years as communities contend with heavy rain and ever-increasing volumes of paved surfaces and tougher federal standards.

Fewer than 10 towns in the region have similar dedicated entities. New Jersey has no stormwater utilities, said Department of Environmental Protection spokesperson Larry Hajna, but the department is working with a number of towns looking to form them.

It is not new to Philadelphia, where it has long been in place. Many residents may be unaware of it because the charge is a line item in the monthly water bill that's

even higher than Chester's, at about \$18.50.

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By any other name, Chester residents may have a point in calling it “the rain tax,” based on a Commonwealth Court decision in a suit brought by [West Chester University](#).

In a ruling that could have profound implications across the state, and perhaps elsewhere, the court found that the stormwater fee the school is paying is in real life a tax; thus, tax-exempt entities shouldn't have to pay it. The case now is before the state Supreme Court.

What are stormwater utilities?

Stormwater is the rain and melted snow and ice that pours out of gutters and off roofs and patios and anything that covers the ground. In a typical rainstorm, a given property could generate more than 1,200 gallons of runoff, says Andy Yench, a [Penn State](#) stormwater expert.

In some places, including Philadelphia and Chester, stormwater and sewage can share pipes. Federal clean-water standards have put the onus on towns to upgrade their water-management systems, saddling towns with “unfunded mandates,” according to officials in [Norristown](#), which also levies the fees.

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More towns have been creating separate entities with powers to levy fees. In his most-recent “stormwater utility” [survey, published in 2022](#), University of Western Kentucky professor Warren Campbell counted 2,000 of them nationwide, with a surge in the last 20 years.

Pennsylvania has at least 87, according to Penn State's Yench.

Campbell formerly was the hydrologist in Huntsville, Ala., where he wanted to adopt a utility and began collecting data to make a case. He hasn't stopped, even though his Huntsville efforts were unsuccessful.

Not surprisingly, the fees aren't exactly welcome, and Yench said the biggest resisters have been the nonprofits, such as churches, community centers, and universities, all of which tend to have extensive impervious cover.

The West Chester University suit

West Chester University, socked with a \$130,000 bill by the borough's "Stream Protection Fee," enacted in 2016, won a ruling in Commonwealth Court in January 2023 that the fee actually was a tax; therefore, as a tax-exempt entity, it should not have to pay.

"The stormwater tax walks, talks, and acts like a property tax," the university had argued in court documents.

The case is on appeal in the state Supreme Court, and friend of the court briefs filed by other municipalities and environmentalists warned that if the ruling were upheld, it would be a tremendous blow to stormwater-control efforts around the state.

Citing "active litigation," the university declined comment.

A spokesperson for the Pennsylvania attorney general's office, which is representing the state university, said no date had been set yet for oral arguments before the Supreme Court.

The university also argued that it had its own stormwater-treatment facility that benefited the entire borough. Companies along the Chester waterfront made

similar, but unsuccessful, arguments in court challenges against the Chester fees.

Back to Chester

Chester, where the median household income of \$39,000 is a little more than half the state's, is different among other towns with similar fees: It is bankrupt.

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[Among 35,000 municipalities in the nation](#), only about about 30 have filed for bankruptcy since the option was offered in the 1930s.

In a court filing, the state receiver who took the city into bankruptcy had raised questions about imposing additional fees on residents who pay among the highest property tax rates in the county and the second-highest wage taxes in the state.

Homeowners, said Adelaide Evans, “actually don’t understand why we even have a stormwater authority. ... I’m sure the elderly and lower-income homeowners are having trouble” paying the bills.

“It’s sad how expensive it is to live in the City of Chester,” she said, “with all the fees attached to the homeowners.”

<https://www.inquirer.com/news/stormwater-fees-chester-philadelphia-taxes-20240310.html>